

COMMENT ON THE PROPOSED AMENDMENT TO ARTICLE 70b:  
FREEDOM FOR AN AUTHOR TO ACT WITHOUT REFERENCE TO THE  
COMMISSION IN THE CASE OF A MISIDENTIFIED TYPE SPECIES

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(see vol. 41, pp. 156–158; vol. 42, pp. 12, 125)

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Sabrosky's application to amend Art. 70b (*Bull. zool. Nom.*, vol. 41, pp. 156–158) and the Secretary's support (but not necessarily for Sabrosky's solution, *Bull. zool. Nom.*, vol. 41, p. 158) reflects the awareness that developed in the Editorial Committee, during the final stages of preparation of the 3rd Edition, of a general need for the Code to provide for an automatic solution to be followed prior to the Commission's final determination. Article 80 requires existing usage to be maintained once a case is before the Commission, but that does not solve the problem for the preparers of catalogues, etc., who may not be able to defer publication for the 2 years or more before a decision is reached by the Commission, or for those who wish to take an undisputed line on their own initiatives.

2. In the case of Article 70b, the present Article requires a zoologist who discovers that a generic name is misapplied because its nominal type species does not belong to the genus-group taxon for which the name is in use, to refer the matter for determination to the Commission (together with a recommendation as to the course of action to provide the best remedy).

3. Sabrosky (*op. cit.*) and Wright (*Bull. zool. Nom.*, vol. 42, p. 12) have argued different solutions. A third solution is adopted by the authors and editors to which Sabrosky refers. The solutions are:

(1) Wright's solution that an author is to follow Article 70a irrespective of the discovery (it would then be up to any other author, disagreeing with that action, to make a case for conservation and, thereby, to stop the new usage by automatically invoking Article 80 to maintain current usage);

(2) Sabrosky's solution that an author should maintain current usage and publish the evidence of misapplication and at the same time designate a replacement nominal type species (which would be fixed by that action unless subsequently set aside by the Commission acting on an appeal). In the event of an appeal, Article 80 would be invoked and would maintain current usage until a decision was reached; and

(3) the solution adopted in the Catalogues of Diptera referred to by Sabrosky, that an author may use judgement as to whether there is sufficient stable usage to justify the use of solution (2); if not, solution (1) would be adopted. Appeals against either action would automatically maintain current usage.

4. In commenting on Sabrosky's proposal, the Secretary of the Commission drew attention to possible conflicts between it and Articles 67 and 69 (*Bull. zool. Nom.*, vol. 41, p. 158).

5. I agree with Wright that the editors of the catalogues mentioned in Sabrosky's application should have followed the letter of the Code. But their actions highlight the need to amend Art. 70b for the reasons given by Sabrosky as well as in the interests of economy in the work-load of the Commission. Had the editors referred to by Sabrosky followed Art. 70b they would have referred some 76 additional cases (with arguments) to the Commission. Quite apart from the delays this course would have introduced, it would have been a costly proposition. I concur with both Sabrosky and Wright that a solution must be found that will enable a zoologist to take a definitive action that will be maintained under the Code unless an appeal against it is upheld by the Commission.

6. My comments on the three solutions are:

*Solution (1):*

While nomenclaturally tidy, solution (1) is not in keeping with what is expected of nomenclature today by zoologists in general.

*Solution (2):*

Solution (2) is conformable with the spirit of the modern Code. However in making that statement I share Wright's concern that the introduction of such an amendment must not, at the same time, encourage authors to accept the operation of that solution as an invitation to discard objectivity. The solution must require the author to replace one nominal type species with another nominal type species and recognise that the consequence of that action will determine the future use of the generic name under all circumstances. The new type species must not, itself, become at some later date 'a misidentified type species' or productive of the very confusion that the proposal seeks to avoid.

To a large extent the problem raised by Wright, and in particular dangers in inviting changes to type species, results from the difficulty for zoologists to comprehend from the Code that, even though the nominal genus is interpreted by an entity called a nominal species (and not by a taxonomic species), a nominal species is not itself any sort of a species in the ordinary sense of a population but only the conjunction of a specimen (the name bearer: holotype, type, neotype, or syntypes) and a name. The consequences of any sloppy methodology of the sort that Wright fears are very clear. To behave responsibly, such an author must go back to the name bearer of the nominal species that is regarded as the desirable type species and verify its identity.

*Solution (3):*

Solution (3) more closely resembles Art. 23b in giving authors the option of following the 'normal' provisions of the Code (but subject to appeal), if, in their judgement, serious upset would not result from the discovery. However authors wishing to put into effect Solution 2 (again, subject to appeal) may do so legitimately.

7. If such a solution were to be adopted, the question remains whether the author adopting solution 2 should be required (as in Art. 23b) to 'register' the action in the appropriate Official List or Index by invoking some such procedure as the *prima facie* provision of Art. 79. I think not. Providing the action taken to depart from the original type species is made explicit in the work and the basis of the 'misidentification' established (to rule out the automatic acceptance of sloppy 'mis-designations' of type species) I see no reason why the procedure should not be covered under the principle of the first reviser.